

Internal Revenue Service
Appeals Office
1375 E. Ninth Street, Ste. 815
Cleveland, OH 44114

Release Number: **201217026**
Release Date: 4/27/2012
Date: January 31, 2012

Department of the Treasury

Taxpayer Identification Number:

Person to Contact:

Tel:
Fax:

Tax Period(s) Ended:

UIL: 501.03-00

Certified Mail

This is a final adverse determination regarding your exempt status under section 501(c)(3) of the Internal Revenue Code (the "Code"). It is determined that you do not qualify as exempt from Federal income tax under section 501(c)(3) of the Code effective January 1, 2006.

Our adverse determination was made for the following reason(s):

To be an organization described in section 501(c)(3) of the Code, an organization must be organized and operated exclusively for charitable, educational, or other exempt purposes described in section 501(c)(3). Our examination of your operations showed that you were not operated exclusively for exempt purposes because your net earnings inured to insiders of your organization and you failed to establish you were not operated for the private interests of designated individuals. Your primary activity of pursuing Proposition 65 litigation, whereby for years 2006-2009 more than 90% of monetary awards from such litigation were earmarked for the contingent fees of your attorneys, is indicative of the private interests being excessively furthered by your operations. See Treas. Reg. §§1.501(c)(3)-1(d)(1)(ii) & (iii). Retroactive revocation of your exempt status is warranted because you omitted or misstated material facts and operated in a manner materially different than represented in your exemption application.

Contributions to your organization are not deductible under section 170 of the Code.

You are required to file Federal income tax returns on Forms 1120 for the tax periods stated in the heading of this letter and for all tax years thereafter. File your return with the appropriate Internal Revenue Service Center per the instructions of the return. For further instructions, forms, and information please visit www.irs.gov.

If you were a private foundation as of the effective date of revocation, you are considered to be taxable private foundation until you terminate your private foundation status under section 507 of the Code. In addition to your income tax return, you must also continue to file Form 990-PF by the 15th Day of the fifth month after the end of your annual accounting period.

Processing of income tax returns and assessments of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Code.

If you decide to contest this determination, you may file an action for declaratory judgment under the provisions of section 7428 of the Code in one of the following three venues: 1) United States Tax Court, 2) the United States Court of Federal Claims, or 3) the United States District Court for the District of Columbia. A petition or complaint in one of these three courts must be filed within 90 days from the date this determination letter was mailed to you. Please contact the clerk of the appropriate court for rules for filing petitions for declaratory judgment. To secure a petition form from the United States Tax Court, write

to the United States Tax Court, 400 Second Street, N.W., Washington, D.C. 20217. See also Publication 892.

You also have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States Court. The Taxpayer Advocate can however, see that a tax matters that may not have been resolved through normal channels get prompt and proper handling. If you want Taxpayer Advocate assistance, please contact the Taxpayer Advocate for the IRS office that issued this letter. You may call toll-free, 1-877-777-4778, for the Taxpayer Advocate or visit www.irs.gov/advocate for more information.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely Yours,

Appeals Team Manager

Enclosure: Publication 892

Internal Revenue Service

**Department of the Treasury
Exempt Organizations**

Date: October 7, 2012

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Certified Mail - Return Receipt Requested

Dear

We have enclosed a copy of our report of examination explaining why we believe revocation of your exempt status under section 501(c)(3) of the Internal Revenue Code (Code) is necessary.

If you accept our findings, take no further action. We will issue a final revocation letter.

If you do not agree with our proposed revocation, you must submit to us a written request for Appeals Office consideration within 30 days from the date of this letter to protest our decision. Your protest should include a statement of the facts, the applicable law, and arguments in support of your position.

An Appeals officer will review your case. The Appeals office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. The enclosed Publication 3498, *The Examination Process*, and Publication 892, *Exempt Organizations Appeal Procedures for Unagreed Issues*, explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

You may also request that we refer this matter for technical advice as explained in Publication 892. If we issue a determination letter to you based on technical advice, no further administrative appeal is available to you within the IRS regarding the issue that was the subject of the technical advice.

If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the Code provides, in part: "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted its administrative remedies within the Internal Revenue Service." We will then issue a final revocation letter. We will also notify the appropriate state officials of the revocation in accordance with section 6104(c) of the Code.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Enclosures:
Publication 892
Publication 3498
Report of Examination

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer XXXXXX		Year/Period Ended XXXXXX

Issue:

1. Should XXXXX's tax exempt status be revoke due to the existence of private benefit and inurement?
2. Should XXXXX's tax exempt status be applied retroactively?

Facts:

XXXXX Inc, XXX, was granted tax exempt status on January 29, XXXX as an organization described in Internal Revenue Code, Code, section 501 (c) (3). XXX's primary exempt purpose, as stated in the Application for Recognition of Exemption Form 1023, is to educate the public about the dangers of hazardous chemicals in the air, water, and consumer products. XXX also mitigates or eliminates the hazardous consequences of such chemical, through bringing and litigating legal actions against those violators. One objective of the of the lawsuit is to achieve injunctive relief against those violators and possibly force the violators to clean up contaminated drinking waters, educate and warn the public about the harmful effects of the hazardous exposures.

XXX is allowed to act in the public interest as a private Attorney General of the State of XXXXX under the XXXXX Health and Safety Code Section 2524.9, commonly known as Proposition 65. XXX identifies suspected violations of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.5 or 25249.6, and it issues the suspected violator a notice, known as a 60 Day Notice, simultaneously XXX provided the same notice to the Attorney General, AG. The AG has up to 60 days to decide if its office will take action against the suspected violator. If the AG elects not take action against the alleged violator, then XXX is free to pursue the matter as a private attorney general. If the suspected violator complies with Proposition 65 then the matter may not be pursued any further but the violator may be subject to penalties. If the suspected violator does not comply with Proposition 65 then XXX is free to bring litigation to force the suspected violator into compliance. XXXXX Code of Civil Procedure section 1021.5 permits an award of attorney fees to the successful party in any action under Proposition 65.

Form 1023 (Exhibit 1) shows that on page three, item 4, XXXXX [XXXX] is the Chief Financial Officer.

XXX's Articles of Incorporation (Exhibit 2), stamped dated by the Secretary of State of the State of XXXXX, October 8, XXXX, show XXXXX, XXXXX, and XXXXX [XXX] as XXX's initial Directors.

XXX's Bylaws (Exhibit 3), signed on July 29, XXXX show XXXXX, XXXXX, and XXXXX as XXX's Directors.

The Internal Revenue Service, the Service, requested information from XXX in a letter dated November 17, XXXX (Exhibit 4) and XXX provided a 13 page letter (Exhibit 5), dated February 3, XXXX. XXX stated that any attorneys representing XXX should share similar values and principles as XXX, but no mention was made of any type of relationship between the Directors or Officer of the organization and the law firm representing XXX. The last page of the letter states that if the Service should have any legal questions to contact XXX's attorney, XXXXX.

The Service sent a letter to XXX on February 11, XXXX, (Exhibit 6) requesting additional information that was not provided on the Service's initial request on November 17, XXXX. As a response XXX provided a seven page letter dated May 17, 2000 (Exhibit 7). In item III, XXX stated that the law firm of XXXXX is currently representing it. In item IV XXX is asked to disclose any type of relationship between its founders,

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officers, or directors and the private law firms which XXX retains and XXX answered the question with a no. In item VI XXX is asked if it was created by lawyers whom might represent XXX and XXX provided a reply but did not answer the question. It did say that Mr. XXXXX conducted the legal work in order to set up XXX as a non profit. In item VIII XXX is asked if they pay the attorneys from proceeds of the court's award to XXX or is there a separate award to the attorneys. XXX stated that it is a wrong assumption to say that the attorneys they engage are purely paid upon a contingency basis. In goes on to say that in some instances they are paid on a contingency basis, in some an hourly basis, and other in a combination of both. In the cases where they are paid upon a contingency basis usually there is separate award from the court. In item X XXX is asked to compare the separate award given to the representing attorney to the award given to XXX in the same case. XXX stated that it is their policy that the attorney can not receive more than fifty percent of the award and that the award is equally divided between XXX and the attorney. In item XIII XXX is asked why the private law firm would work for XXX when the law firm can bring action themselves, among other things, XXX replied that the question should be posed to the law firm.

XXXXXX stated during the examination that XXXXX and XXXXX are brothers. In a telephone interview on February 24, XXXX Mr. XXXXX, the current president, said that XXXXX and XXXXX are brothers and that XXXXX, the current attorney working with XXXXX, is the same XXXXX that founded XXX.

In the Superior Court of XXXXX, County of XXXXX, Consent Judgment Number XXXXX (Exhibit 8), filed by the Attorney General Office against XXX members as a result of donations to disqualified entities. The Injunctive Relief section, 2.1(a) (iii), states that XXXXX shall not vote on or participate in any matter concerning his nephew, XXXXX.

If XXXXX is XXXXX's uncle, then XXXXX is XXXXX's uncle too. The familial relationship between XXXXX, XXXXX, and XXXXX was not disclosed to the Service.

XXXXXX is one of XXX's founding Directors, an active attorney, Bar Number XXXXX, and was accepted into the State Bar of XXXXX on December 31, XXXX (Exhibit 9). It is not clear when Mr. XXXXX began to work with Mr. XXXXX, but there is not doubt that he was an attorney when he founded XXX.

XXXXXX is one of XXX's founding Directors, an active attorney, Bar Number XXXXX, and was accepted into the State Bar of XXXXX on December 1, XXXX (Exhibit 10). It is not clear when XXXXX began working with XXXXX, but there is no doubt that he is an attorney.

The order of the Superior Court of the State of XXXXX County of XXXXX in Case Number XXXXX, dated December 20, XXXX, shows that XXXXX, XXXXX, and XXXXX represented XXX in a lawsuit against the XXXXX (Exhibit 11).

A hard copy print of XXXXX, the Law Firm, web site home page secured on July 21, XXXX shows XXXXX, XXXXX, and XXXXX as three of the attorneys comprising the firm (Exhibit 12). The information clearly shows that the attorneys that created XXX are representing XXX.

XXX provided a nine page letter dated November 14, XXXX (Exhibit 16) as a response to the Service's request for information and explanation of how it was and intended to operate. The letter states in part that Mr. XXXXX is assisting with the preparation of the letter. It also states that the most important factor XXX considers in filing a lawsuit is whether the action will be beneficial to the public and XXX's commitment not to harm very small business. The letter goes on to say that there are instances that XXX sends a notice letter but does not follow it up with a lawsuit because the recipients of the notices proved to XXX that their service or product was not harmful. It also states that if XXX's primary motive for pursuing cases were

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financial award, it would not forgo monetary compensation and the XXX bears all the cost of litigation. XXX states that the court divides the award between XXX and the attorney fees. It also states that in one case the entire \$10,000 award was given directly to the attorneys, but that it is not a common practice. In the same letter XXX offers an explanation as to why the compensation arrangement with the attorneys representing XXX's cases should not be considered as serving their private interest and thus would preclude XXX from qualifying for exemption. XXX states that the attorneys do not receive XXX's net earnings. The directors of the organization and not the attorneys make the decisions for XXX. The paragraph goes on to say that XXX's non profit status is protected by Revenue Ruling 80-278.

The examination revealed that XXX was unable to demonstrate what criteria it considered before resorting to litigation. More importantly XXX was unable to demonstrate what factors it considered before a 60 Day Notice was issued. XXX also did not demonstrate how it determined that an alleged violation existed or how it determined that harmful exposure or harmful chemicals existed.

The examination revealed that XXX was unable to demonstrate that any of the 60 Day Notices issued on its behalf resulted in compliance by the alleged violator without XXX resorting to litigation or resulting in a monetary settlement to XXX. XXX was unable to provide any support to show how the alleged violator proved to XXX that it complied with Proposition 65 and eliminated the harmful condition or exposure.

XXX was unable to demonstrate that it forgoes monetary compensation. XXX was unable to demonstrate that any of its efforts resulted in compliance with Proposition 65 without a monetary award to XXX.

XXX did not demonstrate that it bears any costs of litigation. The examination revealed that XXX did not incur any litigation expenses in XXXX. XXX did not report any litigation or legal expenses on their XXXX, XXXX, or XXXX F990 Return. The AG's records show that 391 60 Day Notices were filed on XXX's behalf from January 1 to December 31, XXXX.

XXX was unable to show that it pays the attorneys on an hourly basis. The XXXX, XXXX, and XXXX F990 do not show any litigation or legal expenses yet XXX prevailed and secured 21 and 31 settlements in XXXX and XXXX respectively

The examination revealed that the monetary awards are not divided equally by the court. The examination revealed that the court designated 73% of the monetary settlements as attorney fees and only 23% was designated to XXX. The examination also revealed that the Law Firm received 92%, 97%, and 86% of the monetary settlements in XXXX, XXXX, and XXXX respectively.

XXX was unable to show that the attorneys do not receive its net earnings. The examination revealed that the attorneys received XXX's net earnings through court's monetary settlement award distribution. XXX did not demonstrate that it gives any direction to the Firm with respect to what violators to pursue. XXX was unable to demonstrate that it had any knowledge of the 391 60 Day Notices filed on its behalf. XXX did not provide any support to show how it became aware of the 391 violation, how it determined the legitimacy of the 391 violation, and that it gave the Law Firm approval to file the 391 60 Day Notices on its behalf.

XXX did not demonstrate that it operates as the organization depicted in Revenue Ruling 80-278. XXX does not employ any attorneys. XXX was unable to show that the lawsuits filed on its behalf were not motivated by private benefit to the attorneys. XXX's litigation activities are not financed through membership dues or contributions from the public. The attorneys get paid on a contingency basis as a

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result of a monetary settlement and then the court, not XXX, decides what portion of the settlement it will designate as attorney fees.

On June 8, XXXX the Firm provided the AG's office documentation to permit a disbursement of funds in the XXXXX case. The documentation included a letter from XXX's president in which he states that XXX's Board approved Mr. XXXXX's bill for investigative work. The documentation also included a letter from Mr. XXXXX attesting that he provided 433 hours of investigative work at \$ an hour from August XXXX to August XXXX resulting in a \$ bill. XXX was unable to provide any support to show that Mr. XXXXX did any work at all. XXX did not provide an agreement, Mr. XXXXX's qualifications to conduct investigative work, time logs, assignment sheets, and most importantly it did not provide any finding as a result of the 433 hours of investigative work. A review of the XXX's XXXX, XXXX, and XXXX F990 Returns revealed that Mr. XXXXX is listed as the Treasurer on each Return.

The XXXXX State Legislature has mandated that the court must determine that the attorney's fees in all settlements of Private Proposition 65 actions be reasonable under XXXXX law. As such the attorneys representing XXX must submit documentation to support their respective fees to the court for approval.

The AG's office keeps a record, Cumulative Proposition 65 Settlement Report, of the settlements reached in Proposition 65 cases. The Cumulative Proposition 65 Settlement Reports for years XXXX to XXXX (Exhibit 18 to 27) were secured from the AG's website. The records shows the settlement date, the plaintiff, the defendant, the injunctive relief, total settlement, civil penalty, attorney fees, other distribution, and an explanation of other distribution. The records show the following:

Year	Total Settlement	Civil Penalty	Attorney Fees	%	Other Distributions	%	
XXXX		0.00		%	282,975.00	%	To XXX
XXXX		0.00		%		%	To XXX
XXXX		0.00		%		%	To XXX
XXXX		0.00		%		%	To XXX
XXXX				%		%	
XXXX		0.00		%		%	
XXXX		0.00					
XXXX		0.00		%		%	To XXX
XXXX		0.00		%		%	To XXX
XXXX		0.00		%		%	To XXX
Totals				%		%	To XXX

XXX's XXXX Form 990 shows \$ in gross receipts from litigation. The XXXX Cumulative Proposition 65 Report shows that XXX was awarded \$ in settlements. , The report also shows that \$: was deemed as attorney fees and \$ was given to XXX. Page 2, of XXX's XXXX F900, shows that XXX paid \$ in legal fees; presumably to its attorneys. The total amount paid to the attorneys in XXXX was \$ or % of the total settlements amount

XXX's XXXX Form 990 shows \$ in gross receipts from litigation. The XXXX Cumulative Proposition 65 Report shows that XXX was awarded \$ in settlements, of which \$ was deemed as attorney fees and \$553,099 was given to XXX. Page 2, of XXX's shows that XXX

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paid \$ in legal fees, presumably to its attorneys. The total amount paid to the attorneys in XXXX was \$ or % of the total settlements amount.

XXX's XXXX Form 990 shows \$ in gross receipts from litigation, the XXXX Cumulative Proposition 65 Report shows that XXX was awarded \$ in settlements, of which \$ was deemed as attorney fees and \$ was given to XXX. Page 2, of XXX's XXXX F990, shows that XXX paid \$ in legal fees, presumably to its attorneys. The total amount paid to the attorneys in XXXX was \$ or % of the total settlement amount. The Balance Sheet of the XXXX F990 shows that the cash amount at the beginning of the year was \$ and the cash amount at the end of the year was \$

XXX's XXXX Form 990 shows \$ in gross receipts from litigation, the XXXX Cumulative Proposition 65 Report shows that XXX was awarded \$ in settlements, of which \$ was deemed as attorney fees and \$ was given XXX. Schedule A, of the XXXX F990, shows that \$ was paid to the law offices of XXXXX. The total amount paid to the attorneys in XXXX was \$ or % of the total settlements amount.

XXX's XXXX Form 990 shows zero in gross receipts, the XXXX Cumulative Proposition 65 Report shows that XXX was awarded \$ in settlements, of which \$ was deemed as a civil penalty, \$ as attorney fees, and zero was paid to XXX. Page 2, of the XXXX F990, shows that \$ was paid in legal fees, presumably to its attorneys. The total amount paid to the attorneys was \$ or 100%, not taking into account the civil penalty, of the total settlements amount.

XXX's XXXX Form 990 shows \$ in gross receipts from litigations, the XXXX Cumulative Proposition 65 Settlement Report shows that XXX was awarded \$ in settlements, all of which was designated as attorney fees. The XXXX F990 does not report any legal fees. The total amount paid to the attorneys in XXXX was \$ or % of the total settlement amount.

XXX's XXXX Form 990 shows \$ in gross receipts from litigation, the XXXX Cumulative Proposition 65 Settlement Report shows that XXX was not awarded any settlements in XXXX. The XXXX F990 does not show any legal expenses.

XXX's XXXX Form 990 shows \$ in gross receipts from litigation, the XXXX Cumulative Proposition 65 Settlement Report shows that XXX was awarded \$220,300, of which \$ was designated as attorney fees and \$ was given to XXX. The XXXX F990 does not show any legal expense. The total amount paid to the attorneys was \$ or 92% of the total settlements amount.

XXX's XXXX Form 990EZ shows zero in gross receipts, the XXXX Cumulative Proposition 65 Settlement Report shows that XXX was awarded \$ in settlements, of which \$ was designated as attorney fees and \$ was given to XXX. The XXXX F990EZ does not show any legal expense. The total paid to the attorneys was \$ or % of the total settlement amount. XXX has not filed their XXXX F990 as of date of this report. The XXXX Cumulative Proposition 65 Settlement Report shows that XXX was awarded \$ in settlements, of which \$ was designated as attorney fees and \$ was given to XXX. The total paid to the attorneys is % leaving % to XXX.

The information shows that the settlement distributions are not divided equally between XXX and the representing attorneys as is XXX's stated policy. The information shows that from XXXX to XXXX the settlements have comprised of % in attorney fees and % paid to XXX. Taking into account the legal

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fees XXX paid the attorneys from XXXX to XXXX, the percentage received by the attorneys in the same time period is 90%.

The XXXX to XXXX F990 Returns show that XXX did not received any membership dues or public donations.

Law:

Section 501 (c)(3) of the Code exempts from federal income tax organizations organized and operated exclusively for charitable, educational, and other exempt purposes, provided that no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the regulations provides that in order to be exempt as an organization described in section 501(c)(3) of the Code, the organization must be one that is both organized and operated exclusively for one or more of the purposes specified in that section.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will not be regarded as operated exclusively for exempt purposes if more than an insubstantial part of its activities is not in furtherance of exempt purposes.

Section 1.501(c)(3)-1.(d)(1)(ii) of the regulations provide that an organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 7805(b) provided that the Secretary may prescribe the extent, if any, to which any ruling (including any judicial decision or any administrative determination other than by regulation) relating to the internal revenue laws shall be applied without retroactive affect.

Rev. Proc. 98-1, 1998-1 I.R.B. 7 provides that except in rare or unusual circumstances, the revocation or modification of a letter ruling will not be applied retroactively to the taxpayer for whom the letter ruling was issued or to a taxpayer whose tax liability was directly involved in the letter ruling provided that: (1) there has been no misstatement or omission of material facts; (2) the facts at the time of the transaction are not materially different from the facts on which the letter ruling was based; (3) there has been no change in the applicable law; (4) the letter ruling was originally issued for a proposed transaction; and (5) the taxpayer directly involved in the letter ruling acted in good faith in relying on the letter ruling, and revoking or modifying the letter ruling retroactively would be to the taxpayer's detriment.

Taxpayer's Position:

Taxpayer does not agree with the proposed revocation.

Government's Position:

XXX was unable to demonstrate that is organized and operated to serve a public interest. A single activity can serve both an exempt and a nonexempt purpose. In this particular case bringing on litigation to force compliance of Proposition 65 does benefit the public, the exempt aspect; and providing reasonable

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compensation for the litigation services is private benefit to the attorney providing those services. However XXX was unable to demonstrate that it does not target Proposition 65 offenders other than those that result in a monetary settlement to XXX or to the Law Firm.

Based on the facts the examination revealed XXX does not qualify to be exempt from Federal income tax because it failed to demonstrate that it carries on any charitable activities within the meaning of Section 501 (c) (3). XXX did not provide any creditable support to show that it carries on any activities to further its tax exempt purpose. XXX did not demonstrate that it identifies, selects, or verifies any Proposition 65 violations.

XXX was unable to demonstrate it is operating in the manner it said it would operate to gain it tax exempt status. XXX was unable to demonstrate that it directs the Law Firm to do anything on its behalf.

XXX did not demonstrate that it pursues Proposition 65 offenders based on the benefit to the general public. The Law Firm pursues alleged offenders of Proposition 65 in the name of XXX but no support was provided that XXX selected the offender or that it authorized it.

XXX did not provide any support that it identified and pursued a Proposition 65 violation that resulted in compliance by the offender without a monetary settlement.

The method XXX and the Law Firm operate results in private benefit to the Law Firm. The private benefit exists because of the attorney fees the Law Firm receives for representing XXX. The examination revealed that the Law Firm acts independently of XXX to pursue Proposition 65 offenders and then it only pursues those offenders resulting in a monetary settlement, nullifying the charitable aspect of the activities.

The Law Firm is comprised of three individuals responsible for XXX's creation, XXXXX, XXXXX, and XXXXX. The fact that the Law Firm undertakes litigation under XXX's name can not be ignored. By doing so the Law Firm avoids the public interest law firm rules and that too is a private benefit.

The AG's records show that the monetary settlements awarded to XXX are not equally divided between the Law Firm and XXX.

Section 7805(b) relief should not be granted because XXX did not disclose the familial relationship between its founders and the Law Firm. XXX did not disclose the fact that Mr. XXXX was an attorney. XXX did not disclose the fact that at least one of its creators was an attorney at the time XXX was created. XXX was asked if it was created by attorneys whom might be retained by XXX, clearly a perceived indicator of a possible private benefit situation. XXX did not answer the question. The attorneys that created XXX are representing XXX.

If XXX had disclosed the fact that at least one of its founders was attorney and the disclosed the familial relationship the Service would have been alerted to the high probability to private benefit and not granted tax exempt status.

The \$ provided to Mr. XXXXX represents inurement because he is an insider and XXX did not provide any support to show that Mr. XXXXX provided any investigative services.

Conclusion:

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Based on the foregoing facts, XXX's tax exempt status should be revoked. XXX is not entitled to section 7805(b) relief.